))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8277 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE RAVI R.TRIPATHI

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

---

GEB

Versus

RK PATEL (TYPIST)

---

Appearance:

MR SP HASURKAR for Petitioner No. 1

RULE SERVED for Respondent No. 1

---

CORAM : MR.JUSTICE RAVI R.TRIPATHI

Date of decision: 09/08/2001

ORAL JUDGEMENT

The present petition is filed by Gujarat Electricity Board against the judgement and award dated 21.2.1994, in Reference (IT) No.479 of 1988 passed by the learned Industrial Tribunal. The respondent workman contended that he was working as English Typist with the

petitioner Board since 1996. Though he was working as English Typist, he was asked to do Gujarati typing also. He has been orally representing his case before the authorities, but he did not get justice. Therefore, he had to approach the Court for justice. His case is that he was appointed on regular basis on a vacant post of English Typist on 15.2.1996. It is also the case of the respondent that since 1972 at Nadiad office while discharging his duties as English Typist he was also performing the additional work of Gujarati typing. Therefore, he is entitled to 20% of the salary as allowance.

2. Having filed reply to the statement of claim of the workman by exhibit 7, the respondent Board did not remain present before the Industrial Tribunal. It is recorded in para 4 of the award that the workman had filed his affidavit at exhibit 31, and for his cross examination, nobody is remaining present from Gujarat Electricity Board. Therefore, no cross examination could be had of the workman. It is recorded in terms by the learned Member of the Tribunal that after filing reply at exhibit 7, nobody is remaining present and therefore, the reference was required to be proceeded further in absence of the Board.

3. Thereafter, the Gujarat Electricity Board filed a Restoration Application being Miscellaneous Application (IT) No. (unnumbered) in Reference (IT) No.479 of 1988. Said restoration application came to be rejected by an order dated 13.2.1995, a copy of which is produced on record by the learned advocate for the respondent Board.

4. Mr.Hasurkar, learned advocate for the petitioner Board submitted that as the award passed against the Board is ex parte and as application for restoration is also rejected, it will be in the interest of justice to quash these orders and remand the matter to the Industrial Tribunal for deciding the same after hearing the Board. It is noticed by this Court in number of matters that the institutions like the petitioner Board do not remain present before the Labour Court or Industrial Tribunal and allow such forum to pass an ex parte award. Thereafter, a restoration application is filed. Even in such restoration applications, there are instances where the officers of the institution do not remain present resulting into rejection of the restoration applications. Ultimately, the matter is brought before this Court.

5. In the present case also, reference is of the

year 1988. It got decided in the year 1994. Thereafter, restoration application is filed and it was rejected on 13.2.1995. Thereafter, the present petition is filed in the year 2000. There is not a word in the petition explaining as to why the petitioner Board chose to file the present petition so belatedly. The award of 1995 is challenged in the year 2000. To be precise, the impugned award is dated 21.2.1994 and rejection order in restoration application is of February 1995. The present petition is filed in July 2000. Thus, the petition suffers from gross delay and latches on the part of the petitioner Board.

6. Mr.Hasurkar submitted that the petitioner Board works through its officers and compliance of the award would be burden on the exchequer and therefore, the Court may exercise extraordinary jurisdiction under Article 226 of the Constitution to protect the ends of justice.

7. In absence of any explanation for delay, the request made by Mr.Hasurkar cannot be acceded to. The same is rejected. However, in the interest of justice, the petitioner Board is directed to hold an inquiry to ascertain as to who the erring officer is, responsible to have left the petitioner Board unrepresented before the Industrial Tribunal. The amount which is required to be paid under this award shall be recovered from such erring officer.

8. The petition is rejected. Rule is discharged. Interim relief is vacated. No order as to costs.

(Ravi R. Tripathi, J.)

karim